HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.472 of 2007

Between:

B. Siddappa

... Appellant

And

The Commissioner of Prohibition and Excise,
Government of Andhra Pradesh, at Hyderabad
and four others

... Respondents

::JUDGMENT::

Counsel for the appellant : Shri B. Sai Ram Goud

Counsel for respondent Nos.1 to 4 : Government Pleader for Prohibition and Excise

Counsel for respondent No.5 : Shri O. Manohar Reddy

June 08, 2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 29-3-2007 passed by the learned Single Judge in Writ Petition No. 18228 of 2006, whereby she quashed the auction conduced by the Prohibition and Excise Superintendent, Anantapur for grant of lease of right to sell Indian-made foreign liquor to the appellant in respect of shop No.1,

Municipal Election Division No.10 of Ananthapur.

It is not in dispute that in the auction conducted by the official respondents pursuant to notification dated 31.07.2006 issued under the Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005, the appellant gave highest bid in respect of the shop in question; that his bid was accepted and that he was granted licence to sell the liquor. It is also not in dispute that in Writ Petition No.18228 of 2006 filed by him questioning the re-auction of the shop in question, respondent No.5 did not implead the appellant as party respondent and without noticing this fatal defect in the constitution of the writ petition, the learned Single Judge quashed the auction proceedings.

In our opinion, the appellant was a necessary party to the writ petition filed by respondent No.5 and the learned Single Judge could not have set aside the auction without giving him notice and opportunity of hearing. It appears to us that attention of the learned Single Judge was not drawn to the patent defect of non-impleadment of necessary party in the writ petition, else she would have dismissed the writ petition or insisted on impleadment of the appellant as party respondent.

Be that as it may, we are convinced that the order under challenge is liable to be set aside on the ground of violation of the rules of natural justice because the appellant has been deprived of his right to carry on business without being heard.

For the reasons stated above, the appeal is allowed. Order dated 29-3-2007 passed by the learned Single Judge is set aside with the direction that the writ petition filed by respondent No.5 be listed before the Single Judge for fresh disposal on merits. Till then, the appellant shall be allowed to operate the shop.

As a sequel to disposal of the appeal, WAMP Nos. 893 and 894 of 2007 filed by the appellant are disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

June 08, 2007
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